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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,201	03/22/2004	Bernadette Depke	092970.00002	1940
33448. 7590 01/10/2007 ROBERT J. DEPKE LEWIS T. STEADMAN ROCKEY, DEPKE, LYONS AND KITZINGER, LLC SUITE 5450 SEARS TOWER CHICAGO, IL 60606-6306			EXAMINER DOAN, DUC T	
			ART UNIT 2188	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/806,201

Applicant(s)

DEPKE ET AL.

Examiner

Duc T. Doan

Art Unit

2188

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

Claims 1-20 have been presented for examination in this application. In response to the last office action, claims 1-6,11 have been amended, claim 7 has been canceled, claim 21 has been added.

The added claim 21, by Applicant's amendment filed in 11/07/09, required a restriction. In the subsequently telephonic interview on 12/13/06, Applicant elected claims 1-6,8-20 of group I, and canceled claim(s) of group II (i.e claims21),

As the results, claims 1-6,8-20 are pending in this application.

Claims 1-6,8-20 are rejected.

Applicant's amendments/remarks filed 11/07/09 have been fully considered but they are mooted in view of new ground(s) of rejection necessitated by the Applicant's amendments to the claims.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I: Claims 1-6,8-20 drawn to memory for storing and accessing information using memory such as RAM, ROM, EEPROM, classified in class 711, subclass 100.

Group II: Claim 21, drawn to a method and apparatus to process information for digital audio data processing system, classified in class 700, subclass 94.

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as processing songs in an audio data processing system that does not have the same structures as that claimed in invention I. See MPEP 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

#### *Interview Summary*

A telephonic interview was conducted with Applicant's representative, Robert J. Depke # 39969 on 12/13/06 to discuss the election/restriction requirement on the instant application necessitated by the applicant's amendments filed on 11/07/06. Applicant's representative elected the invention in group I (i.e claims 1-6,8-20) and canceled claim(s) in group II (i.e claim 21).

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

A person shall be entitled to a patent unless -

(a) the invention was known or used by other's in this country or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1,5-6,8-11,15-20 are rejected under 35 U.S.C. 102 (e) as being anticipated by Mori (US 2003/0186645).

As in claim 1, Mori discloses a system for downloading data comprising (Mori's Fig 1a: #50 internet media player): a first memory containing information representing a time of transmission and a source of transmitted data of interest, the first memory being associated with a user device, wherein the first memory stores the time of transmission and an identification of the source of transmitted data for each of a plurality of data of interest (Mori's paragraph 20 discloses that the internet media player stores/records a token in its memory Fig 2b: #66, corresponding to the claim's first memory; the token includes broadcast station identifier, broadcast frequency, timestamp when the media program currently playing/being broadcasted) ; and

A mechanism for designating storage of time of transmission and a source of transmitted data of interested into the first memory; and further comprising a data processing system for

correlating the stored time of transmission information and identification of the source of transmitted data with desired data of interest for each of a plurality of independent transmission sources (Mori's paragraph 18, the stored token latter used by a computer to correlate and making the media program and/or any relate information available to user), and a means for transmitting the desired data of interest to an additional user memory (Mori's paragraph 35 discloses a method in which the user can select the desired media program and may decide to buy and subsequently the desired media program is sent/downloaded to the user's PC computer, correspond to the claim's an additional user memory).

As in claim 5, Mori's paragraph 18 discloses the internet media player can be used latter to download and view the television program broadcasted and down load into user's receiver (Mori's paragraphs 1-2).

As in claim 6, the claim rejected based on the same rationale as of claim 5. Mori's paragraph 1-2 further discloses the desired program can be a song heard on the radio.

As in claim 8, Mori discloses the data of interest is song being broadcasted (Mori's paragraph 2).

As in claims 9, Mori discloses the data of interest includes any program broadcasting over a car radio (Mori's paragraph 19) being broadcasted over conventional air wave, therefore, inherently it includes news program.

As in claim 10, Mori discloses that the token provides the user with any information relating to this marked media program (corresponding to the claims' product related).

Claim 15 rejected based on the same rationale as of claim 5.

As in claim 17, Mori discloses correlating stored timed of transmission and a source of transmitted data of interested with information specially identifying data of interest (Mori's paragraph 20 discloses that the internet media player stores/records a token in its memory Fig 2b: #66, corresponding to the claim's first memory; the token includes broadcast station identifier, broadcast frequency, timestamp when the media program currently playing/being broadcasted).

Claim 17 rejected based on the same rationale as of claim 7.

Claim 18 rejected based on the same rationale as of claim 8.

Claim 19 rejected based on the same rationale as of claim 9.

Claim 20 rejected based on the same rationale as of claim 10.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4,12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mori (US 2003/0186645) as applied to claim 1, 11 respectively, and further in view of Pan et al (US 2005/0206370).

As in claims 2-4, Mori does not expressly disclose the memory types for the memory in the portable internet media device as an EEPROM (claim 2); magnetic disk drive memory (claim 3); RAM (claim 4). However, Pan discloses a portable storage devices having circuitry to record the images (still images or motion DVD image etc..) into the memory of device, memory includes RAM (Pan's paragraph 32,33), hard disk, EEPROM (Pan's paragraph 33). It would have been obvious to one of ordinary skill in the art at the time of invention to include the data recording method as suggested by Pan in Mori's system, thereby further allowing the portable device to store it's data into many widely popular memory device types.

Claim 12 rejected based on the same rationale as of claim 2.

Claim 13 rejected based on the same rationale as of claim 3.

Claim 14 rejected based on the same rationale as of claim 4.

### ***Response to Arguments***

Applicant's amendments/remarks filed 11/07/09 have been fully considered but they are mooted in view of new ground(s) of rejection necessitated by the Applicant's amendments to the claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 36 CFR 1.136(a).




A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

When responding to the office action, Applicant is advised to provide the examiner with the line numbers and page numbers in the application and/or references cited to assist examiner to locate the appropriate paragraphs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Doan whose telephone number is 571-272-4171. The examiner can normally be reached on M-F 8:00 AM 05:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
HYUNG SOUGH  
SUPERVISORY PATENT EXAMINER  
1-5-07